

HONORABLE BRIAN D. LYNCH  
Chapter 11  
Hearing Date: January 18, 2018  
Hearing Time: 9:30 a.m.  
Courtroom: Tacoma, Room I  
Resp. Date: January 11, 2018

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF WASHINGTON

In re:

OLYMPIA OFFICE, LLC;  
WA PORTFOLIO, LLC;  
MARINERS PORTFOLIO, LLC; and  
SEAHAWK PORTFOLIO, LLC,

Debtors.

Case No. 17-44721-BDL-Lead Case  
(Jointly Administered)<sup>1</sup>

**MLMT2005-MCP1 WASHINGTON  
OFFICE PROPERTIES, LLC'S REPLY  
IN SUPPORT OF MOTION UNDER  
BANKRUPTCY CODE SECTIONS 105,  
362(d)(1), 362(d)(2), 362(d)(4) AND  
1112(b) FOR RELIEF FROM THE  
AUTOMATIC STAY OR IN THE  
ALTERNATIVE FOR DISMISSAL OF  
BANKRUPTCY CASES**

<sup>1</sup> In Re Olympia Office LLC is Case No. 17-44721-BDL; In re WA Portfolio LLC is Case No. 17-44722-BDL; In Re Mariners Portfolio LLC is Case No. 17-44723-BDL; In Re Seahawk Portfolio is Case No. 17-44724-BDL.

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1 Secured Creditor MLMT 2005-MCP1 Washington Office Properties, LLC  
2 (“Noteholder”) files this reply in support of its Motion Under Bankruptcy Code Sections 105,  
3 362(d)(1), 362(d)(2), 362(d)(4) and 1112(b) for Relief From the Automatic Stay or in the  
4 Alternative for Dismissal of Bankruptcy Cases (the “Motion”).<sup>2</sup> In their opposition to the  
5 Motion, Debtors fail to rebut Noteholder’s entitlement to relief from stay or dismissal. For  
6 the reasons set forth in the Motion and below, Noteholder requests that the Court grant the  
7 Motion, lift the automatic stay and provide *in rem* relief, including prohibiting Debtors from  
8 taking any action to interfere with the Foreclosures, including without limitation, transferring  
9 the Properties or filing further bankruptcy cases.

### 10 **I. INTRODUCTION**

11 Contrary to Debtors’ arguments in their 26-page opposition to the Motion, this Court  
12 does not have to decide whether Debtors filed the NY Bankruptcies (as opposed to the  
13 pending bankruptcy cases (the “Pending Bankruptcies”)) in bad faith, whether the Loans are  
14 currently in default, when Noteholder became entitled to default interest, the actual amount of  
15 Noteholder’s claim, or the value of the Properties based on competing appraisals. On all of  
16 the foregoing issues except whether Debtors filed the Pending Bankruptcies in bad faith  
17 (which, of course, were commenced subsequent to the NY Court’s entry of the Dismissal  
18 Order), the NY Court made res judicata findings, and this Court need only review the NY  
19 Court’s Dismissal Ruling to determine that this Motion should be granted. Following the  
20 exchange of thousands of pages of discovery, nearly a dozen lengthy depositions, and a full  
21 evidentiary hearing, the New York Court found, among other things, that:

- 22 • “The Debtors have never contended that the notes were not in default as of the  
23 petition date or entitled to post-petition default interest. Thus, since at least  
24 October 20 of 2016 when Olympia filed, post-petition interest would have  
25 been accruing at approximately \$11,200 per day; 343 days from the petition  
26 date to today [September 28, 2017] means that an aggregate amount of just

27 <sup>2</sup> Undefined terms herein have the same definitions set forth in the Motion.

1 post-petition default interest of \$3,841,600 has accrued while these cases sat in  
2 Chapter 11.” [Dismissal Ruling, Bornheimer Dec., Ex. DD, 38:24-39:6]<sup>3</sup>

- 3 • “Thus, if the Debtors were absolutely right on every argument that they  
4 asserted with respect to the timing and occurrence and cause of default under  
5 the CDC plan, and if they had the legal standing to argue that Midland  
6 breached the CDC plan by allocating available funds to sub-account reserves  
7 and account reserves rather than the plan payment, Noteholder would now be  
8 owed at least \$36.8 million, plus reasonable attorneys’ fees and other allowable  
9 charges, plus the \$420,000 that was actually advanced by the Noteholder post-  
10 petition as the DIP lender, plus allowable interest the Court’s Order  
11 authorizing the DIP loan.” [39:7-17]<sup>4</sup>
- 12 • “Thus, at this juncture, the Properties would have to be worth at least \$39  
13 million to cover the Noteholder’s claims and provide for even minimal cost of  
14 selling the properties with modest brokerage commissions before there was  
15 any chance of any funds being available for other creditors, including  
16 administrative claimants. Again, that would require that the debtor be 100  
17 percent correct on their allegations as to when did they begin to be in default,  
18 and [whether] the debtors have legal standing to assert those claims to the  
19 extent that they constitute a claim of breach of the CDC plan, which this court  
20 is not finding or determining today as it is not necessary to the outcome as I’ve  
21 announced it.” [39:18-40:4]
- 22 • “Therefore, the Court has determined that it is more likely that the properties  
23 do not have a current value of more than \$39 million, which is more consistent  
24 with the stabilized value as assessed by Midland when there was not litigation  
25 in sight at the time they were preparing for the foreclosures. This is a “no  
26 apparent more than” valuation; that is not a value boundary.” [42:16-22]
- 27 • “. . . the properties would be barely worth . . . not more than the value ascribed  
28 by the Court of \$39 million which would render the Noteholder slightly  
29 undersecured at the petition date in the amount adequate to control Class 2.”  
[43:14-17]<sup>5</sup>

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1 As detailed in the Motion, Noteholder is entitled to relief from stay or dismissal *even if*  
2 *Debtors are 100% correct on their assertions.* As set forth above, in the Dismissal Ruling,  
3 the NY Court set a floor for the amount of Noteholder's debt (assuming the validity of all of  
4 Debtors' arguments) and a ceiling for the value of the Properties, which demonstrates not only  
5 that Noteholder is undersecured, but that Noteholder would control the class of unsecured  
6 creditors with its deficiency claim under any plan that Debtors propose. If Debtors (the  
7 identical parties to the NY Bankruptcies) took or take issue with the Dismissal Ruling, their  
8 remedy is not to collaterally attack and mischaracterize the Dismissal Ruling as they do in  
9 their opposition, but to appeal the Dismissal Ruling and Dismissal Order. Debtors have not  
10 done so, their time to do so has expired, and the Dismissal Ruling and Dismissal Order have  
11 become a final, res judicata judgment. Based on the NY Court's findings in the Dismissal  
12 Ruling, even if Debtors are correct on their arguments, Noteholder is entitled to relief from  
13 stay under Bankruptcy Code Section 362(d)(2).  
14

15 Moreover, as detailed in the Motion and below, the only circumstances that have  
16 changed since the NY Bankruptcies were dismissed only strengthen Noteholder's entitlement  
17 to relief from stay or dismissal – Noteholder's claim has continued to increase at \$11,200 per  
18 day plus additional fees and costs, Debtors have submitted no new evidence of value of the  
19 Properties since the NY Bankruptcies were dismissed,<sup>6</sup> the Loans have matured, and Debtors  
20 have engaged in additional conduct since filing the NY Bankruptcies demonstrating that they  
21 filed the Pending Bankruptcies in bad faith (Motion, 16:5-17:24; and Section II below). Thus,  
22 Noteholder is also entitled to relief from stay, dismissal, and *in rem* relief under Bankruptcy  
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26 unsecured deficiency claim of at least \$1,588,728.50, exclusive of reasonable attorneys' fee and other charges, to  
27 which the NY Court determined Noteholder is entitled.

28 <sup>6</sup> Debtors admit in their bankruptcy schedules that they have not obtained appraisals of the Properties within the  
29 last year. Debtors submitted with their opposition to the Motion the same appraisals they submitted in the NY  
Bankruptcies, which appraisals, along with the appraisals submitted by Noteholder, were considered by the NY  
Court in determining the "not more than" value of the Properties. Thus, the most current value of the Properties  
is the NY Court's determination in the Dismissal Ruling, which took into account the appraisals submitted by  
Debtors in opposition to this Motion.

1 Code Sections 105, 362(d)(1), 362(d)(4) and 1112(b) based on Debtors' bad faith filing of the  
2 Pending Bankruptcies.

3 **II. BECAUSE DEBTORS FILED THE PENDING BANKRUPTCIES IN BAD FAITH,**  
4 **NOTEHOLDER IS ENTITLED TO RELIEF FROM THE AUTOMATIC STAY, IN**  
5 **REM RELIEF, AND DISMISSAL UNDER BANKRUPTCY CODE SECTIONS 105,**  
6 **362(d)(1), 362(d)(4) AND 1112(b)**

7 Because the NY Court determined that there is no equity in the Properties based on the  
8 floor the NY Court established as to Noteholder's claim and the ceiling the NY Court  
9 established as to the value of the Properties, and therefore Debtors cannot reorganize or  
10 confirm any plan over Noteholder's objection (Dismissal Ruling, 16:7-10; 17:15-20:19; 20:6-  
11 8; 24:2-6; 43:11-44:7), the NY Court dismissed the NY Bankruptcies without having to  
12 determine whether Debtors acted in bad faith in filing the NY Bankruptcies. The NY Court  
13 did indeed state that *at the time Debtors filed the NY Bankruptcies* they had a viable intent to  
14 reorganize, but nonetheless (i) the NY Court cited numerous indicia of Debtors' bad faith,  
15 many of which occurred *after* Debtors filed the NY Bankruptcies, and (ii) as noted in the  
16 preceding sentence, notwithstanding Debtors' "viable intent" at the time they filed the NY  
17 Bankruptcies, in dismissing the NY Bankruptcies the NY Court determined that Debtors in  
18 fact could not reorganize (or for that matter, confirm any plan). At the time Debtors filed the  
19 Pending Bankruptcies, Debtors did not have a viable intent of reorganizing (or confirming any  
20 plan). That fact, together with the indicia of bad faith cited by the NY Court (Motion, 11:11-  
21 12:3; 14:20-16:23) and the additional bad faith conduct by Debtors after the NY Bankruptcies  
22 were dismissed (Motion, 16:23-19:16) demonstrate that Debtors filed the Pending  
23 Bankruptcies in bad faith.  
24

25 As reflected in the following chart, Debtors' attempts to rebut their bad faith,  
26 including those based on alleged changed circumstances, are neither accurate nor persuasive,  
27 and are completely lacking in merit:  
28  
29

**Debtors' Contention**

The \$100,000 purchase price for the Properties is not evidence of bad faith because Debtors acquired the Properties subject to "a large, multi-million dollar debt obligation" [21:11-15]<sup>7</sup>

Moving to substantively consolidate the NY Bankruptcies is evidence of good faith because Debtors moved to substantively consolidate in response to the NY Court's expressed concern in successive bankruptcy petitions. [21:16-18]

Debtors state that while the NY Court expressed concern that Debtors manufactured a class of unsecured creditors, it refused to find the class was manufactured, citing page 21 of the Dismissal Ruling. [21:21-22 and note 4]

"Debtors were also preparing to file bankruptcy should no relief be granted – that

**Actual Facts**

Debtors believe that there is at least \$10 million in equity in the Properties. [23:6-7] Paying \$100,000 for \$10 million in equity is bad faith.

The NY Court expressed concern because Olympia filed its NY Bankruptcy by itself, not because the NY Bankruptcies were not substantively consolidated. The timing of the filing of the petitions is different than moving for substantive consolidation. Moving for substantive consolidation was bad faith because it revealed that the testimony of Michael Pilevsky that the four separate Debtors were formed for tax purposes was a sham given that through substantive consolidation, Debtors no longer were keeping themselves separate. And Debtors' intent was to file serial bankruptcy filings, as evidenced by the fact that Olympia filed its petition by itself. The only reason the other Debtors subsequently filed together was to stay a motion before this Court in the CDC Case to enforce the CDC Plan and determine that the purported transfers of the Properties to Debtors were void under the CDC Plan.

Nothing on page 21 of the Dismissal Ruling indicates that the NY Court refused to find the class was manufactured. What the NY Court stated was "The Court is significantly concerned then about an effort by the debtors to manufacture a class of general unsecured creditors to then be voting and apparent consenting class to carry confirmation of the plan . . ." [Dismissal Ruling, 20:20-24]

After initially telling this Court in connection with remanding the state court

<sup>7</sup> Citations without a source are to Debtors' opposition to the Motion.

1 was the only way to protect the property from  
2 the unproven debt and nonjudicial foreclosure  
3 aggressively pursued by Noteholder.” [17:17-  
4 19] “It became clear Noteholder . . . would  
5 only use the state court action, even with a  
6 stay, as an excuse to increase its one-sided  
7 assessment of the amount owed.” [17:22-18:2]

action that only the state court, and not this  
Court, had jurisdiction to resolve the dispute  
over the amount of Noteholder’s claim,  
Debtors completely reversed their position  
(now contending that *only* this Court, and  
not the state court, has jurisdiction –  
Motion, 3:18-24) after seeing Noteholder’s  
opposition to Debtors’ preliminary  
injunction motion. Moreover, contrary to  
Debtors’ justification for filing bankruptcy  
before the state court action could rule on  
the relief requested by Debtors,  
Noteholder’s claim will continue to accrue  
whether or not Debtors are in bankruptcy.

10 Filing bankruptcy on the eve of foreclosure is  
11 not bad faith. [18:16-20]

Noteholder does not contend that such fact  
alone constitutes bad faith. First, there is all  
the additional evidence of bad faith.  
Second, Debtors took the same action a  
second time, after their first cases were  
dismissed, constituting multiple filings.

15 Forming Debtors right before filing bankruptcy  
16 is not bad faith. [19:4-15]

The bad faith is not just that Debtors were  
formed right before filing bankruptcy.  
Debtors were formed in four jurisdictions to  
acquire fractional interests in the Properties,  
purportedly for tax purposes (later revealed  
to be a sham when Debtors moved to  
substantively consolidate), with the intent of  
serial bankruptcy filings, all while  
intentionally concealing the acquisition of  
the Properties from Noteholder.

22 This is not a two-party dispute because  
23 Debtors have other creditors, including its  
24 former counsel with a claim of \$838,000,  
25 accounting professionals and consultants.  
[19:16-19]

The NY Court already expressed its concern  
that the claims of Debtors’ other alleged  
creditors were manufactured and all related  
to helping Debtors carry out their scheme.  
With respect to Debtors’ former counsel,  
creating a claim by failing to pay their  
former bankruptcy counsel is itself  
evidence of bad faith. Further, Debtors  
themselves contend that such claim is not  
even valid, as Debtors dispute it in their  
schedules and List of 20 Largest Creditors.

29 The value of the Properties has increased.

In the Dismissal Ruling, the NY Court set

1 [12:10-13:3]

the ceiling on the value of the Properties at \$39 million (\$37.5 million now since Moses Lake was subsequently sold for \$1.5 million). There is no evidence before this Court of the value of the Properties after the issuance of the Dismissal Ruling. Debtors have proffered appraisals from 2016, over a year ago, but (i) the NY Court took those appraisals into account in reaching its conclusions, and (ii) Debtors admit in their schedules that the Properties have not been appraised in the last year.

9 “Debtors purchased ownership interests in the  
10 Properties with the intent to work with the loan  
11 servicer, Midland, and the Noteholder to cure  
12 the previous owner’s purported payment  
13 issues” [19:7-9]

Prior to acquiring the Properties, Debtors reviewed, among other things, Noteholder’s notices of default in the chain of title setting forth Noteholder’s entitlement to default interest dating back to 2013, and stating amounts owed well in excess of the bondholder reports. If Debtors believed the notices of default were incorrect, the time to work with Noteholder was before Debtors acquired the Properties. In fact, in internal communications produced in discovery in the NY Bankruptcies, Debtors admitted that the outstanding debt exceeded the value of the Properties and that there was no equity in the Properties. Knowing that Noteholder would not consent to the transfer of the Properties and the CDC Court would not approve the transfer without paying off Noteholder and CDC’s other creditors, however, Debtors in bad faith not only did not approach Noteholders, but actively concealed their scheme from Noteholder. [Motion, 6:18-29]

24 “The principal and interest payments are being  
25 paid on a current monthly basis and continue  
26 to be paid.” [Switzer Dec., Dkt. No. 59, par.  
27 38, 11:2-3] “This does not consider the  
28 approximately \$500,000 payment made to  
29 Midland in September/October 2017 without  
approval or notification to the Debtors. [*Id.*, 11:9-11]

Mr. Switzer’s testimony is perjurious. Principal and interest payments are not being paid to Noteholder. Noteholder never received any payments without approval or notification to Debtors. While Noteholder did receive some of the proceeds of the Moses Lake property sale, and applied \$459,629.91 to principal and interest, that was done pursuant to a court order issued by



the NY Court based upon the agreement of  
Noteholder and Debtors (Motion, 10:7-10;  
Bornheimer Dec, Ex. EEE]

Moreover, Debtors' conduct falls squarely within Bankruptcy Code Sections 362(d)(4)(A) and (B), thereby warranting *in rem* relief. Since before Debtors acquired the Properties in September 2016, as detailed in the Motion and above, Debtors have engaged in a scheme for almost 16 months to delay and hinder Noteholder from legitimately exercising its rights and remedies involving both (i) purported transfer of the Properties to Debtors without the knowledge (let alone the consent) of Noteholder or court approval, and (ii) multiple (i.e., more than one) bankruptcy filings affecting the Properties – the NY Bankruptcies and the Pending Bankruptcies. In fact, this Court has deemed Debtors to be “repeat filers”. Further, Debtors filed the Pending Bankruptcies in a different bankruptcy court, an implicit admission that the NY Court would not have concluded that there were changed circumstances warranting a different outcome. Based on the foregoing, Debtors have filed the Pending Bankruptcies in bad faith and Noteholder is entitled to relief from stay, *in rem* relief, and dismissal under Bankruptcy Code Sections 105, 362(d)(1), 362(d)(4) and 1112(b).

### **III. RELIEF FROM THE AUTOMATIC STAY IS ALSO WARRANTED UNDER BANKRUPTCY CODE SECTION 362(d)(2)**

Relief from the automatic stay is also warranted under Bankruptcy Code Section 362(d)(2) because there is no equity in the Properties and the Properties are not necessary to an effective reorganization.

#### **A. There Is No Equity in the Properties**

##### **1. Noteholder's Claim is No Less Than \$39,088,728.50**

As set forth in the Motion (9:13-10:16), and updating Noteholder's claim to January 18, 2018, exclusive of attorney's fees and other charges to which the NY Court determined Noteholder is entitled, without taking into account costs of sale, and accepting 100% of

1 Debtors' arguments as to the amount of Noteholder's claim (including when the Loans went  
2 into default, whether and when default interest began to accrue, the significance of the  
3 bondholder reports,<sup>8</sup> etc.),<sup>9</sup> Noteholder's claim based on the NY Court's findings is not less  
4 than \$39,088,728.50.

5 Debtors challenge whether a default under the Loans ever occurred and whether  
6 Noteholder ever became entitled to default interest. However, as noted above in the  
7 Introduction, these issues were resolved by the NY Court in the Dismissal Ruling – (i) the  
8 Loans went into default at the latest on October 20, 2016 when Olympia filed its NY  
9 Bankruptcy, (ii) Noteholder became entitled to default interest at the latest on that same date,  
10 and (iii) Debtors never contended that the Loans were not in default as of October 20, 2016 or  
11 that Noteholder was not entitled to post-petition default interest. If Debtors did not agree with  
12 the NY Court, they should have appealed the Dismissal Ruling and the Dismissal Order,  
13 rather than seeking to collaterally attack them. In addition, as of October 17, 2017, the Loans  
14 have matured by their own terms.  
15  
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17

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18 <sup>8</sup> The bondholder reports show only amounts actually owed to bondholders after certain advances made by the  
19 master servicer to keep the bondholders current, not amounts owed by CDC under the actual loan documents on  
20 account of the Loans. The amounts owed to bondholders by Noteholder – which is the securitization trust and  
21 the actual lender – has nothing to do with the amount owed under the loan documents. The master servicer  
22 makes protective advances, including advances of interest payments not paid by CDC as well as other amounts  
23 to protect the interests of bondholders and the underlying collateral. The only effect of these advances is that the  
24 bondholders are kept current. Such advances have nothing to do with the amounts that CDC owes under the loan  
25 documents. In light of these advances made to bondholders, the bondholder reports reflect only outstanding  
26 principal on the Loans because the master servicer keeps bondholders current even though CDC is in default and  
27 not current on the Loans. Contrary to Debtors' implication, the expectation is that these advances will eventually  
28 be repaid and certainly not intended as a gift to CDC or Debtors in the form of forgiveness of interest and other  
29 protective advances for taxes and other expenses just because the master servicer is paying those amounts  
current to bondholders. The only contractual documents that govern the relationship between Noteholder and  
CDC are the actual loan documents. The transactions between Noteholder and the bondholders have absolutely  
no impact on CDC's obligations and neither CDC nor the Debtors are beneficiaries of such transactions. All  
outstanding and unpaid amounts under the governing loan documents remain the contractual obligation of CDC.

<sup>9</sup> As set forth in the Bornheimer Declaration submitted in support of the Motion, Debtors are not correct on their  
arguments as to the amount of Noteholder's claim and Noteholder is actually owed in excess of \$46,613,166.93.  
However, to grant this Motion and provide the relief requested by Noteholder, the Court need not determine that  
Noteholder's claim is more than the \$39,088,728.50 that assumes Debtors are 100% correct on their arguments.  
Moreover, now that the Loans have matured, whatever the amount owed, Debtors cannot cure the default other  
than to repay the Loans in full.

Moreover, Debtors do not even have standing to challenge the amount of Noteholder's claim. Since Debtors are not the Borrowers on the Loans, they are not in contractual privity with Noteholder, and acquired the Properties without notice to or the consent of Noteholder. Because Noteholder cannot be compelled to accept the Debtors as Noteholder's borrower, Debtors lack standing to assert challenges to Noteholder's claim. *See Pescrillo v. HSBC Bank USA, N.A.*, 2015 WL 417659 (W.D.N.Y. 1/30/15) (where borrower transferred property to non-borrower debtor and debtor filed bankruptcy on eve of foreclosure, "a debtor has no right to restructure mortgages in bankruptcy when the debtor is not in privity with the mortgagee"). While the NY Court had ruled prior to the Dismissal Ruling that Debtors would have standing to propose a chapter 11 plan, it expressly distinguished standing to propose a plan from standing to challenge a claim where the debtor has no contractual privity with the lender -- in the Dismissal Ruling the NY Court expressly stated that Debtors very well may not have standing to challenge the nature of the defaults under the Loans and the amount of Noteholder's claim, but that the NY Court is not deciding that issue because doing so is not necessary to the outcome of the Dismissal Ruling. [Dismissal Ruling, 39:9-12; 39:25-40:4]

Further, based on unclean hands and estoppel, Debtors cannot challenge the amount of Noteholder's claims. As set forth above, based on the notices of default that Noteholder had issued and Debtors' internal communications produced during discovery which acknowledged that the outstanding debt exceeded the value of the Properties, Debtors knew the amount of the claim asserted by Noteholder, which was well in excess of the principal amount set forth in the bondholder reports and the value of the Properties. Yet, not only did Debtors not approach Noteholder to discuss the Loans prior to acquiring the Properties from CDC, but they actively concealed the transfer from Noteholder.

## **2. The Properties Are Worth No More Than \$37,500,000**

As noted above, the NY Court determined that the value of the Properties is no more than \$39 million. If Debtors did not agree with that finding, they should have appealed

1 the Dismissal Ruling and the Dismissal Order, which they did not do. When subtracting the  
2 \$1.5 million in sales proceeds from the Moses Lake property, which sale took place after the  
3 Dismissal Ruling, the value of the Properties is no more than \$37.5 million. Moreover, the  
4 only evidence of value Debtors proffer in opposition to the Motion is appraisals of the  
5 Properties from over a year ago, predating the Dismissal Ruling. In fact, the NY Court  
6 considered the appraisals that Debtors now proffer in reaching its value conclusion. Based on  
7 the foregoing, as of January 18, 2018, exclusive of attorneys' fees and other charges to which  
8 the NY Court determined Noteholder is entitled and costs of sale, and assuming that Debtors  
9 are 100% correct on their arguments regarding the amount of Noteholder's claim, considering  
10 only Noteholder's claim (and not the claims of other creditors), Debtors actually have  
11 negative equity in the Properties in the amount of \$1,588,728.50.

13 **B. The Properties Are Not Necessary to an Effective Reorganization**

14  
15 First, notwithstanding arguments to the contrary in their opposition, Debtors admit  
16 that they are not going to reorganize: "Debtors anticipate proposing a liquidating plan here"  
17 (Declaration of Scott G. Switzer (Debtors' COO) filed December 29, 2017, Dkt. No. 20, 3:5).  
18 Given that Debtors are not going to reorganize, the Properties are not necessary to an effective  
19 reorganization.

20 Moreover, Noteholder's deficiency claim, even assuming Debtors are correct on 100%  
21 of their arguments, is even larger than as set forth in the Motion because there is an additional  
22 week of interest. As set forth in the Motion (22:3-24:23), because Noteholder would control  
23 any class of unsecured creditors and therefore Debtors cannot confirm any plan without  
24 Noteholder's consent, the Properties cannot be necessary to an effective reorganization. Since  
25 there is no equity in the Properties and the Properties are not necessary to an effective  
26 reorganization, Noteholder is also entitled to relief from stay under Bankruptcy Code Section  
27 362(d)(2).  
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#### IV. CONCLUSION

For the reasons set forth in the Motion and above, both relief from the automatic stay (including *in rem* relief under Bankruptcy Code Section 362(d)(4)), and dismissal, are warranted. Noteholder respectfully requests that in order to prevent further abuse of process by the Debtors, the Court (i) grant this Motion under Bankruptcy Code Sections 105 and 362(d), (ii) lift the automatic stay (but not dismiss the cases), and (iii) provide *in rem* relief, including prohibiting Debtors from taking any action to interfere with the Foreclosures, including without limitation, transferring the Properties or filing further bankruptcy cases. Alternatively, if the Court is inclined to dismiss the cases under Bankruptcy Code Section 1112(b), Noteholder respectfully requests that the Court fashion similar *in rem* relief under Bankruptcy Code Section 105 and retain jurisdiction over the Properties and not dismiss the cases until after the Foreclosures have occurred.

DATED this 15th day of January, 2018.

LANE POWELL PC

By /s/ Charles R. Ekberg

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## CERTIFICATE OF SERVICE

I certify that on the date indicated below, I caused the foregoing document to be presented to the Clerk of the Court for filing and uploading to the CM/ECF system. In accordance with their ECF registration agreement and the Court's rules, the Clerk of the Court will send e-mail notification of such filing to the ECF recipients of record.

I affirm under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge.

SIGNED January 15, 2018, at Los Angeles, California.

/s/ Shadi Mahmoudi  
Shadi Mahmoudi, Esq.